

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR LINN COUNTY

GREEN CROSS DISPENSARY, LLC;
GAYLE ASHFORD, AND RANDY
SIMPSON

Plaintiffs

v.

CITY OF BROWNSVILLE, A MUNICIPAL
CORPORATION OF OREGON; City of
Brownsville Planning Commissioners
Bryan Wyant, Mike McDaniel, Gary
Compton, Josh Kometz and Rob; Scott
McDowell, City Administrator; City
Councilors Block, Shepherd, Chambers and
Neddeau,

Defendants

CASE NO.: 19CV33720

SECOND AMENDED COMPLAINT

42 U.S.C. 1983 –
FIRST AMENDMENT;
VIOLATION OF THE FOURTEENTH
AMENDMENT'S GUARANTEES OF
EQUAL PROTECTION-
CLASS OF ONE

PRAYER: \$120,000
(ORS 21.160(1)(c); \$560)
NOT SUBJECT TO ARBITRATION
DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a civil action for damages and attorney's fees, for unlawfully denying plaintiffs a conditional use permit required to obtain an OLCC License to operate a recreational cannabis dispensary. Despite the undisputed fact that Oregon state law *required* the City of Brownsville to grant the permit, both the Planning Commission, then the City Council, denied the application, openly stating that were individually against marijuana for a variety of reasons. This represent a violation of the equal protections of law (Fourteenth Amendment), under 42 U.S.C. 1983, as class of one.

2. These individuals' outward dislike for marijuana along with the disdain and

1 disparaging remarks about its presence in the community, despite the state legalizing the
 2 recreational sale of marijuana, operated to deny these plaintiffs their First Amendment right
 3 to discuss the commercial activity involved in the selling of recreational cannabis.

PARTIES

5
 6 3. At all relevant times, plaintiffs were and are residents of the state of Oregon;
 7 Green Cross Dispensary, LLC as a registered Oregon Corporation, and Mr. Randy Simpson
 8 and Ms. Gayle Ashford are Oregon residents, and controlling members of Green Cross
 9 Dispensary, LLC.

10 4. Defendant City of Brownsville (hereafter 'City') is a municipal corporation
 11 charged with and responsible for all license approvals and legislation within the City,
 12 including land use and City Planning. At all relevant times Defendant City had the power,
 13 right and duty to control the manner in which the individual defendants in this lawsuit carried
 14 out the objectives of their employment, and to see that all orders, rules, training, instructions
 15 and regulations promulgated for the City were consistent with the State and Federal
 16 Constitutions, Statutes, and the laws of the municipality.

17
 18
 19 5. The City Council and Planning Commission were at all times a function of the
 20 City. The individual defendants named in this lawsuit-- City of Brownsville Planning
 21 Commissioners Wyant, McDaniel, Compton, Josh Kometz and Rob; Scott McDowell, City
 22 Administrator;
 23 City Councilors Block, Shepherd, Chambers and Neddeau -- were at all material times
 24 acting under color of state law and acting as an agent/employee of the City and within the
 25 course and scope of their employment. They are sued in their individual capacity.

26 6. The individual Defendants' acts which are the subject of this lawsuit were

1 undertaken in the regular course of their employment for Defendant City.

2 **FACTUAL OVERVIEW**

3
4 7. In accordance with Oregon law, if the City of Brownsville wants to do prohibit
5 recreational cannabis dispensaries within City limits, it must put the question to the voters at
6 the next election. They put the question to the voters, and the prohibition was voted down. At
7 that point, according to Oregon law, the City of Brownsville must allow recreational
8 cannabis dispensaries within City limits.

9
10 8. These claims arise out of the unlawful denial of a conditional use permit required
11 by OLCC for Plaintiffs to apply for their license allowing them to open their recreational
12 sales of cannabis dispensary, titled Green Cross Dispensary. The denial came first from the
13 Planning Commission, then, following a timely appeal, the denial was upheld by the city
14 council. A LUBA Appeal was timely filed, resulting in the City Council reversing its
15 decision.

16
17 9. Plaintiff's application for conditional use permit application was deemed complete
18 May 30th, 2017. Within 60 days after the Plaintiff's application for a conditional use was
19 received, in accordance with BMC 15.125.030.C, July 17, 2017 the planning commission
20 held a hearing. On July 31, 2017, the planning commission denied the application, and on
21 August 1, 2017 it was registered. A copy of the July 31, 2017 transcript is attached hereto.
22 This denial could start the two-year statute of limitations to run. The stronger argument is
23 that time would begin after the city council upheld the denial (see, Paragraph 11, Infra).
24 Because the City would not agree to that date, Plaintiffs file this action at this time to
25 preserve all aspects of the timeliness of the claim.
26

1 10. A timely appeal was filed to the Brownsville City Council. The city council heard
 2 the appeal, upholding the planning Commission's denial, September 26, 2017. These are the
 3 minutes of that meeting, relevant to Plaintiffs' appeal:

4 McDowell stated that this is an issue that has certainly divided this
 5 community. This issue puts these Councilors, Staff, neighbors, and users
 6 at odds. He does not envy any of the people to his left that have to make
 7 these kinds of decisions. He applauds all who are here tonight. To
 8 articulate for the public record, this has never just been about marijuana.
 9 Some folks think that the U.S. Constitution is being ignored and the
 10 Federal law is being broken. There is a strong body that believes that
 11 nationally. In the State of Oregon, voters did approve Measure 91,
 12 legalizing marijuana, and some will argue that it is unconstitutional. It is
 13 split down the line in this room tonight. City Staff and City Councilors are
 14 charged with discharging certain responsibilities. The City Attorney is
 15 focused on not getting the City involved in a liability situation. Liability is
 16 precarious at best. If the Simpsons appeal to LUBA(Land Use Board of
 17 Appeals) some folks are saying that the City's argument will not stand and
 18 the City will probably lose. With that said, sometimes Councils have to
 19 make decisions that they don't want to make. Councilor Gerber stated that
 20 she will be voting in the same way as she did before. She believes the
 21 Simpsons have met the conditions and that they City did vote in favor of
 22 recreational and medical marijuana. However, she would definitely vote
 23 for a City ordinance limiting outdoor marijuana grows outdoors; the City
 24 should be able to legally control that. Mayor Don Ware said that he will be
 25 voting the same as well. An official vote was called for. *Voting to deny the*
 26 *approval were Councilor Shepherd, Block, Chambers, and Neddeau.*
Voting against the denial were Mayor Don Ware and Councilor Gerber.
The denial motion passed, 4-2.

(Emphasis in original)

11. Following the City's reversal of the decision to uphold the Planning Commission's denial, a LUCS (Land Use Compatibility Statement), needed to complete the OLCC Application, was issued to Plaintiffs, and the application was submitted shortly thereafter.

12. Plaintiffs did not fully obtain their OLCC license until July 2018—more than one-year after they submitted their application for conditional use permit in May 2017.

13. The record of sales from May 2017 to June 2018 are:

May-17	17
Jun-17	144
Jul-17	218
Aug-17	184
Sep-17	243
Oct-17	189
Nov-17	170
Dec-17	128
	1,293
Jan-18	204
Feb-18	112
Mar-18	141
Apr-18	192
May-18	141
Jun-18	100
	890
	2,183

14. In accordance with those experienced and expert in the field, long-time marijuana dispensary owner—both medical and then recreational -- the average recreational

1 sale is about \$45. This sums up to 2,183 times (X) \$45 = \$98,235. This figure does
2 not/cannot include these customers' subsequent follow-up visits, which is currently occurring
3 now that the recreational dispensary is operational.
4

5 15. Separately, there were these out-of-pocket expenses attributable to the unlawful
6 denial:

7 Legal fees: \$7,000

8 Transcript fees: \$1,000

9 Licensing fees: \$4,000 (they had to obtain another, unnecessary, medical license)
10

11 **FIRST CLAIM FOR RELIEF**
12 **(Violation of Constitutional Right to Free Speech and Assembly)**
13 **(42 U.S.C. § 1983, First Amendment to the U.S. Constitution)**
14 **(Individual Defendants)**

15 16. The foregoing paragraphs are incorporated herein by reference.

16 17. By their actions as described herein, the individual defendants, under color of
17 statute, ordinance, regulation, custom, or usage, unlawfully denied Plaintiffs their right to the
18 license necessary to practice their trade, and engage in the type of speech and assembly
19 necessarily included in the practices of that trade, solely because they dislike and disfavor the
20 content of the trade, its speech and its assembly, through unbridled discretion, subjected
21 Plaintiffs to deprivation of their liberty interests, which constitutes rights, privileges, or
22 immunities secured by the Constitution and laws.
23

24 18. As a direct and proximate result of the deprivation of Plaintiffs' rights,
25 Plaintiffs sustained actual damages, including loss of liberty; mental and emotional suffering;
26 humiliation; shame; embarrassment; worry; fear; anguish; shock; nervousness; and anxiety;

1 all to her damage in an amount to be ascertained according to proof at trial.

2 19. As a direct and proximate result of the unlawful actions of Defendants in this
3 claim, Plaintiffs sustained actual damages as detailed in Paragraphs 14 and 15 of this
4 Complaint.
5

6 20. The actions of the individual Defendants, as described in this First Claim For
7 Relief, herein, were malicious, deliberate, intentional, and embarked upon with the
8 knowledge of, or in conscious disregard of, the harm that would be inflicted upon Plaintiffs.
9 As a result of said intentional conduct, Plaintiffs will be seeking punitive damages against
10 the individual Defendants in an amount sufficient to punish them and to deter others from
11 like conduct.
12

13 21. Plaintiffs were required to hire attorneys to represent them in this matter and
14 is entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

15 22. Plaintiffs are entitled to a jury trial.
16

17 **SECOND CLAIM FOR RELIEF**
18 **VIOLATION OF THE FOURTEENTH AMENDMENT'S**
19 **GUARANTEES OF EQUAL PROTECTION**
20 **(42 U.S.C. § 1983)**
21 **(42 U.S.C. § 1983, Fourteenth Amendment to the U.S. Constitution**
22 **Class of One)**
23 **(Individual Defendants)**

24 23. The foregoing paragraphs are incorporated herein by reference.

25 24. By their actions as described herein, the individual defendants, under color of
26 statute, ordinance, regulation, custom, or usage, subjected plaintiffs to the deprivation of
rights, privileges, or immunities secured by the Fourteenth Amendment of United States

1 Constitution and laws, by unlawfully denying Plaintiffs their right to the license necessary to
 2 practice their trade, solely due to their animus toward the content of plaintiffs' class status—a
 3 lawful recreational cannabis dispensary. Thereby singling out these Plaintiffs as a class of
 4 one. The Equal Protection Clause ensures that all persons similarly situated should be treated
 5 alike. Similarly situated in this instance means all persons applying for a conditional use
 6 permit. The equal protection guarantee protects not only groups, but individuals who would
 7 constitute a "class of one." Where, as here, state action does not implicate a fundamental
 8 right or a suspect classification, the plaintiff can establish a "class of one" equal protection
 9 claim by demonstrating that it has been intentionally treated differently from others similarly
 10 situated and that there is no rational basis for the difference in treatment. Plaintiffs in this
 11 instance, unlike most if not all others, were in the unique position of having a mandate from
 12 Oregon statutes to have their conditional use permit be granted by Defendants.

15 25. As a direct result of this unequal treatment under the laws by defendants,
 16 Plaintiffs were subjected to deprivation of their liberty interests, which constitutes rights,
 17 privileges, or immunities secured by the Constitution and laws.

19 26. As a direct and proximate result of the deprivation of Plaintiffs' rights,
 20 Plaintiffs sustained actual damages, including loss of liberty; mental and emotional suffering;
 21 humiliation; shame; embarrassment; worry; fear; anguish; shock; nervousness; and anxiety;
 22 all to her damage in an amount to be ascertained according to proof at trial.

23 27. As a direct and proximate result of the unlawful actions of Defendants in this
 24 claim, Plaintiffs sustained actual damages as detailed in Paragraphs 14 and 15 of this
 25 Complaint.
 26

28. The actions of the individual Defendants, as described in this First Claim For Relief, herein, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted upon Plaintiffs. As a result of said intentional conduct, Plaintiffs will be seeking punitive damages against the individual Defendants in an amount sufficient to punish them and to deter others from like conduct.

29. Plaintiffs were required to hire attorneys to represent her in this matter and is entitled to an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

30. Plaintiffs are entitled to a jury trial.

FOURTH CLAIM FOR RELIEF
(Municipal Liability Claim - 42 U.S.C. § 1983;
Monell v. Dept. of Social Services and Adickes v. Kress
(Marijuana Bias)
(Defendant CITY OF BROWNSVILLE)

31. The foregoing paragraphs are incorporated herein by reference.

32. Defendant City has failed to properly train and guide the individual defendants, in their city positions, as either elected officials or hired officials, on how to guarantee the city's residents their constitutional and statutory rights. In this case lawful cannabis dispensary was the sole factor in making these decisions.

33. Defendant City is directly liable to plaintiffs for its unconstitutional policies, customs, or practices; and/or for failing to properly train its decision makers, elected and hired.

34. As a direct and proximate result of the actions and omissions described in this complaint, plaintiffs incurred damages alleged herein, and were required to hire an attorney

1 to represent them and is entitled to an award of reasonable attorneys' fees and costs pursuant
2 to 42 U.S.C. § 1988.

3 35. Plaintiffs are entitled to a jury trial.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiffs request a jury trial and demand judgment in their favor and
7 against defendants for the relief sought herein; future request for punitive damages, for their
8 reasonable costs and attorney fees; and for any other relief deemed appropriate by the court.
9

10 Respectfully submitted September 17, 2019,
11

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Attorneys for Plaintiffs

City of Brownsville Planning Commission Meeting

Land Use Planning Meeting

Transcribed from CD- Simpson

July 31st, 2017



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City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

1

CITY OF BROWNSVILLE PLANNING COMMISSION MEETING

JULY 31, 2017

Notice of Removal
Defs' Ex. 2 (12 of 66)

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

2

1 COMMISSIONER: We'll go ahead and
2 reconvene this meeting from -- what date was it last
3 time?

4 COMMISSIONER: July 17th.

5 COMMISSIONER: July 17th. So what I
6 think we'll do is we'll do roll call, do the pledge
7 of allegiance, and then I'll turn it over to Scott
8 to kind of summarize things for us, and then we'll
9 get back into this conditional permit request.

10 ELIZABETH COLEMAN: Commissioner
11 Wyant.

12 COMMISSIONER: Here.

13 ELIZABETH COLEMAN: Commissioner
14 MacDaniel?

15 COMMISSIONER: Here.

16 ELIZABETH COLEMAN: Commissioner
17 Thompson?

18 COMMISSIONER: Here.

19 ELIZABETH COLEMAN: Commissioner
20 Andrews?

21 COMMISSIONER: Here.

22 ELIZABETH COLEMAN: Commissioner
23 Compton?

24 COMMISSIONER: Here.

25 ELIZABETH COLEMAN: Commissioner

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

3

1 Wendgren?

2 COMMISSIONER: Here.

3 ELIZABETH COLEMAN: Commissioner

4 Kometz?

5 COMMISSIONER: Present.

6 ELIZABETH COLEMAN: And Scott McDowell
7 and myself are here. Scott is passing --

8 COMMISSIONER: We'll do the pledge
9 first.

10 ELIZABETH COLEMAN: Sorry. You're
11 right. I'm ahead of the game.

12 (Crosstalk.)

13 (Pledge of Allegiance.)

14 SCOTT: So welcome to part two of the
15 Simpsons' application clarification. I want to talk
16 about what we learned as a result of Mr. MacDaniel's
17 question and then some procedural things, too, that
18 I wanted to address with the planning commission.

19 So at the last meeting to consider
20 Simpsons' request for a recreational conditional use
21 application, the planning commission had a
22 relatively robust discussion over some of the pros
23 and cons, how that fit in the plan. There was some
24 discussion regarding a variety of issues from
25 federal law to the American Medical Journal

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

4

1 articles.

2 Bottom line at the end of the day was
3 Mr. Mike MacDaniel was responding to a question, as
4 was Mr. Brian Wyant, about the part of the municipal
5 code that deals with playgrounds and the thousand
6 foot rule.

7 Commissioner Compton -- or Chair
8 Compton attempted to address that question but the
9 question remained unanswered. I had attempted to
10 get ahold of the attorney prior to the meeting, the
11 city attorney. He was on vacation so I wasn't able
12 to clarify that rule.

13 So basically what the committee did
14 was they had made it through the public portion of
15 the meeting. They went into the discussion portion
16 of the meeting, which was for the commission only.
17 Upon that question being asked, a summary vote was
18 taken to see what it turned out to be. Turned out
19 to be a 3-3 tie.

20 However, since Mr. MacDaniel had made
21 the motion, and Mr. Wyant, for us to go forth and
22 you guys agreed to go forth for more information,
23 that's why the meeting was tabled so that we could
24 reconvene this evening.

25 Upon that, (inaudible) some of the

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

5

1 information, Mr. Rob Wendgren was not in attendance
2 at the last meeting. He is in attendance at this
3 meeting. However, did -- Mr. Rob, were you able to
4 come in before five o'clock today and listen to the
5 audio recording of the last meeting?

6 COMMISSIONER: No.

7 SCOTT: Okay. So Mr. Wendgren will
8 not be able to participate. So the rule is this: I
9 mean, he can -- he can sit here and have a seat, but
10 the rule is, is if you're going to be a voting
11 member on an issue that was heard at a reconvening,
12 you have to come in and listen to the full audio.
13 So that's why Elizabeth was saying, you know, five
14 o'clock the day of the meeting you would need to do
15 that. So that's one procedural step.

16 Second procedural step is it is up to
17 the planning commission chair, of course, if you
18 want to reopen any public portion of the meeting.
19 Otherwise, we would just get down to business.

20 So -- so getting back down to the
21 question from the attorney, I talked to Ross
22 Williamson at Speer Hoyt. I brought up the
23 question. Chapter 15.111 marijuana uses. As we
24 were in that chapter, under zoning and conditions of
25 approval which we're talking about, paragraph B1(c)

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

6

1 says within 1,000 feet of a public park, playground,
2 recreational facility, or athletic field.

3 However, in paragraph C, it clarifies
4 what that means. In paragraph C3 it indicates a
5 public park, playground, recreational facility, or
6 athletic field, means a park, playground,
7 recreational facility, or athletic field that is
8 owned or operated by a government entity or a
9 nonprofit organization and that is open to the
10 general public excluding mini parks or pocket parks
11 as defined in the City's master park plan.

12 So the reason why the City attorney
13 and, of course, they were doing this in real-time
14 when we were going through the land use with no
15 precedents or anything, right, they were taking a
16 look at how do we keep our clients out of litigation
17 on marijuana issues.

18 They ruled that -- not just in our
19 case but in many cases that they dealt with in their
20 clients -- that the City's -- the City's park master
21 plan, as approved and adopted by the Council, is a
22 stand alone document, so it is a stand alone
23 document that has bearing, so those are the
24 definitions that were used.

25 In the City's park master plan,

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

7

1 Blakely Park is considered a pocket park. Even
2 though there's a playground there, right, even
3 though it's within 1,000 feet or roughly 640 feet,
4 plus or minus, its still, by definition, qualifies
5 as an eligible place to locate a marijuana business.

6 And for the sake of this argument --
7 for the sake of conditional uses that we were able
8 to do at the time, marijuana uses include medical
9 and recreational.

10 So to answer your question, Mike, it
11 does meet the code under those series of
12 definitions.

13 I asked the rationale for the
14 attorney. He said basically what we were trying to
15 do at that time, and he said, "I still stand behind
16 it today." He said, you never want -- you're not
17 allowed by the revised statute to zone a use out --
18 you can't zone a use out. And so, in effect, if we
19 would have done time place and manner, and we would
20 have zoned not just the Simpsons but anyone wanting
21 to do marijuana, out of our community, then they
22 would have a legal grounds to actually come against
23 the City with a lawsuit.

24 So, you know, of course their number
25 one priority is to avoid that, and so that's why

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

8

1 that came down that way. So hopefully that provides
2 enough clarity on that issue. I know that it's --
3 you know, it's a bit of a semantics issue because it
4 is a playground, and I totally see your point,
5 Commissioner Wyant. So that's what I've got,
6 though, in terms of answering that specific
7 question.

8 Is there anything else you wanted me
9 to do? Oh, I will, though. I will, though. So in
10 matter of procedure. So basically what Chair
11 Compton will do moments from now is he will reopen
12 the discussion between the commissioners and the
13 commissioners will be able to vote, save Mr. Rob, on
14 the topic.

15 Basically what would happen at that
16 point, if the vote ends this time in 3-3 tie, a 3-3
17 vote is a denial. What happens at that point is the
18 applicant, Mr. and Mrs. Simpson -- Ashford and
19 Simpson -- would be able to appeal that decision to
20 the City Council.

21 Basically how that works procedurally
22 is within 15 days of the notice of decision, which I
23 think there's a timeline we have there, we've got
24 five days to get the notice and decision out, they
25 would have 15 days upon receipt of that notice of

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

9

1 decision to let us know if they would like to appeal
2 that decision to the City Council. And then the
3 City Council would hear the exact same presentation
4 and make a determination at that meeting.

5 So that's procedurally what would
6 happen if it ends in a tie.

7 So with that, Chair Compton, I will
8 throw it back to you unless there are any other
9 questions.

10 COMMISSIONER: Okay. Thank you,
11 Scott.

12 SCOTT: Sure.

13 COMMISSIONER: And right now, unless
14 other people have a need to reopen the public
15 portion --

16 UNIDENTIFIED FEMALE SPEAKER: I have a
17 question to ask the Simpsons.

18 COMMISSIONER: We'll right now that
19 portion is closed. What would the question be
20 around?

21 UNIDENTIFIED FEMALE SPEAKER: But
22 you'd have the ability to reopen it.

23 COMMISSIONER: Yeah, but I think we
24 can discuss what it is.

25 UNIDENTIFIED FEMALE SPEAKER: I wanted

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

10

1 clarification (inaudible) a better understanding --
2 a better remembrance for me --

3 COMMISSIONER: Okay.

4 UNIDENTIFIED FEMALE SPEAKER: -- of
5 what the OLCC planning (inaudible) a year from now.
6 Because that will be (inaudible) they alluded to
7 that, that there were changes coming, and they had
8 to be in place she thought, by July of 2018, that
9 it's going to be mandated.

10 That's my remembrance but I need to be
11 clear on that, because that could affect my view of
12 this.

13 COMMISSIONER: Yeah. Well -- and that
14 was something I was going to discuss as well, so
15 maybe what we'll do is -- I'll share kind of where
16 I'm at, you share what your ideas or concerns are,
17 and then after we discuss it, and -- then maybe the
18 commission will have some pointed questions to ask
19 them.

20 UNIDENTIFIED FEMALE SPEAKER: Yeah, I
21 just don't want to be wrong and rely on my memory
22 and have it be incorrect.

23 COMMISSIONER: Well, the other thing
24 that I think that (inaudible) I have is -- I mean,
25 I'm sure they are doing their best to report to us

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

11

1 their understanding of changes but (inaudible) their
2 description of what their understanding is as fact.

3 UNIDENTIFIED FEMALE SPEAKER: My
4 understanding (inaudible) --

5 COMMISSIONER: Yeah.

6 UNIDENTIFIED FEMALE SPEAKER: Which --
7 from the OLCC, which would be pretty --

8 ELIZABETH COLEMAN: And you can ask
9 questions of the applicant at this time. Just so
10 that you know, you can ask questions. It's part --
11 it's still part of the process.

12 COMMISSIONER: But it's not if it's
13 closed.

14 ELIZABETH COLEMAN: Well, you can
15 reopen that portion of it.

16 COMMISSIONER: Oh, yeah, yeah. But
17 the question is on the OLCC information. Do you
18 guys have access to that or have you read it? I
19 mean, the Simpsons, last time, were talking about
20 the changes coming with what they were told. Did
21 that match your understanding or was that new
22 information to you? I just don't want to take that
23 as fact.

24 MS. ASHFORD: That was somewhat new
25 information, and I actually have a call into the

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

12

1 OLCC on some clarifying piece for that, which is-

2 COMMISSIONER: I guess I'm just real
3 hesitant to take their interpretation of a confusing
4 situation up there as fact for us to use as a basis
5 of fact for our finding and discussion.

6 UNIDENTIFIED MALE SPEAKER: Well, I
7 think that OLCC probably has every intention of
8 doing that but we don't know really, honestly --
9 again, this whole situation has been so fluid and
10 ever changing. You know, I'm sure that OLCC intends
11 to do those things, but whether or not they will be
12 able to and who knows what will happen in terms
13 of -- there's a lot of folks who are upset about
14 certain applications. Who knows what's going to
15 happen at the next legislative session and so forth.

16 COMMISSIONER: So -- yeah. So I think
17 that reminds me. It seems like last time we just
18 decided, well, we just need to kind of base it on
19 what the law is today.

20 UNIDENTIFIED FEMALE SPEAKER: And that
21 could be reopened in a year or whenever that change
22 is.

23 COMMISSIONER: Yeah, yeah. Let's talk
24 about it some more and then we'll see where we're at
25 after the discussion. There may be other questions

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

13

1 and then we can open it. Does that make sense?

2 ELIZABETH COLEMAN: Yeah. Sure.

3 COMMISSIONER: Well, I will go ahead
4 and just -- I want to hear from everyone what their
5 position is or if they've had additional thoughts or
6 any ideas for further discussion.

7 What Trish is bringing up that I also
8 want to disclose, I guess, probably -- I think it
9 does fall under ex parte communication or
10 (inaudible) -- I'm not sure. But actually, there is
11 a -- when I got home, I called up Don and asked him
12 if he had some time to read this first paragraph and
13 see if he kind of came up with any new
14 interpretations of that paragraph other than what I
15 had presented in the meeting.

16 And then Brian and I had a brief
17 conversation. He was just -- being a new
18 commissioner, he was just asking me if he thought --
19 was asking me if his position on the parks was out
20 of line for his role as a commissioner, and I told
21 him I did not think so, that I supported his opinion
22 and that he was attempting to interpret the
23 ordinances and the rules and make a decision based
24 on -- you know, making a decision based on that, and
25 that was the decision he had made. So I told him I

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

14

1 thought he was within the bounds of his role.

2 And then Trish emailed me and asked
3 me, Gary, if we were to have a conditional use where
4 edibles were not part of the business, is that
5 something you would consider?

6 And I wrote back that that's also
7 something I thought of and it would be something I
8 would consider but would have to look at the
9 research again about how much of an impact that has.

10 TRISH: And I think I said would it
11 change your view.

12 COMMISSIONER: Yeah.

13 TRISH: I didn't ask you to change
14 your decision.

15 COMMISSIONER: No.

16 TRISH: I said would it change your
17 view.

18 COMMISSIONER: Right. And I said
19 possibly based on -- after I have reviewed the
20 research. So -- and then I got an email from
21 Scott -- not to leave Scott out.

22 SCOTT: Right.

23 COMMISSIONER: Informing us to be --
24 up dating us on some of the rules but also stating
25 that it's important, with an issue like this, not to

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

15

1 -- we've got to be careful about talking about it in
2 public and talking to friends and family and
3 communicating at length with even other
4 commissioners so . . .

5 SCOTT: Yeah. And I do want to say
6 thank you to the commissioners. I thought that,
7 given the circumstances, you handled the situation
8 as best you could. A very difficult situation.
9 Obviously been a point of conversation in our
10 community for a number of years at this point. But
11 yes, you've got to be careful of ex parte contacts.

12 Anytime a meeting is -- is tabled as
13 such, especially when it's a quasijudicial hearing
14 like the planning commission, staff are really the
15 only people that are safe to talk to in terms of ex
16 parte contact. So since you've listed the ones,
17 you're doing a great job there.

18 So it's just a good learning curve for
19 future situations when you're tabled. I mean, even
20 if we were -- I know we're going to have one that's
21 possibly contentious coming up, so that's just --
22 it's a point of order to remember for future.

23 COMMISSIONER: And then just to -- to
24 continue the conversation that Trish brought up
25 tonight was that -- I guess I am open to considering

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

16

1 approving the request with the condition that
2 edibles not be sold, and that's based on the
3 research that showed that 52 percent of the
4 hospitalizations -- I know Rob hasn't read this, but
5 the research was talking about increase in calls to
6 poison control and to the hospital when Colorado
7 moved from medical to recreational.

8 So the edible products seemed to be
9 responsible for 52 percent of the exposures, so to
10 me, that's pretty significant. And kind of going
11 back to this paragraph that, you know, I was quoting
12 up here, you know, it's weighing out the -- any of
13 the concerns or harm against the benefits, the
14 desirability of it.

15 So I am open to doing that, and I want
16 to hear where everybody else is at with the park
17 issue and federal concerns. (Inaudible).

18 COMMISSIONER: Well, to me, the park
19 was never an issue because I thought it was a pocket
20 park from the beginning, and so I wasn't concerned
21 about that. The thing I keep going back to is all
22 these years we've been told and we have been trying
23 to use four criteria in determining whether or not
24 there should be a conditional use. These are the
25 things we're supposed to use. We're not supposed to

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

17

1 use our personal feelings, outside evidence,
2 discussions from the community, how the people voted
3 or anything. We're supposed to use these four
4 criteria period.

5 And I think in order for me to be
6 consistent, regardless of whether it's marijuana,
7 alcohol, guns, or whatever, I still have to use the
8 same four criteria regardless of my personal
9 feelings about it because we have to be consistent
10 and treat everybody the same.

11 So I read these four criteria
12 consistent with the applicable policies of the
13 comprehensive plan, and then they list A through N
14 on that -- this is on page 6 of the staff report.

15 So the first criteria we have to be
16 concerned about is is it consistent with the
17 applicable policies in the comprehensive plan, and
18 they list all of those. The only one I can see
19 where there's even any question whatsoever is B.
20 That's the one that talks about adversely impacting,
21 which is your situation. All the rest of them have
22 to do with plumbing, water, everything else, which
23 fits.

24 So going through this so far, the only
25 thing I had is this adversely impact the surrounding

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

18

1 uses.

2 You look at the second criteria, it
3 doesn't -- I mean, we don't have to worry about the
4 location, size, the design, and operating
5 characteristics of the proposal. We don't have to
6 worry about the location, the size, design,
7 operating characteristics. That's not a concern.
8 So it fits that.

9 We look at the third criteria,
10 preserve those historical, archeological, natural,
11 and scenic assets. We're not concerned with that,
12 so that's a yes.

13 Then the fourth one -- where did it
14 go? Does not place an excessive burden on streets,
15 sewage, water supply, (inaudible) system, et cetera,
16 so we're not concerned with that.

17 So the only thing that I can see that
18 we're even concerned about is B, whether or not it
19 meets the -- that meets B of the first criteria.
20 Will the proposed development adversely impact the
21 surrounding areas? And that seems to be, as far as
22 I'm concerned anyway, the only issue that we need to
23 worry about.

24 And I can't see that it's going to
25 adversely impact the surrounding uses. It's that

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

19

1 simple. So my conclusion is the same as staff
2 (inaudible) when they recommend this, so that's the
3 way I looked at it. It's very complicated, so I had
4 to try to simplify it in my own mind using the
5 paperwork from the City to figure out what to do,
6 and that's what I came up with.

7 We got 10 or 12 pages of paperwork
8 here, and it's all very good, it's all very good
9 with the background. But when you sift the wheat
10 from the chaff, we have this one straw: Will
11 proposed development adversely impact the
12 surrounding uses?

13 That seems to be the question. If the
14 answer to that is yes, then we should vote against
15 it. If the answer to that is no, then we should
16 vote for it. That's the way I see it.

17 COMMISSIONER: Yeah. I hear what
18 you're saying, and I guess -- and I know you like a
19 good discussion (inaudible).

20 I think one of the things that we --
21 conclusion we also came to last time is that staff
22 or Liz or maybe her predecessor came up with this
23 format, but what I did is I went to the City
24 ordinances that list what we're supposed to be
25 doing. And I know this is throwing a monkey wrench

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

20

1 into what we've done for the last 12 years I've been
2 here -- but I sat down and read this word for word,
3 and it states in here that in addition to those four
4 things, before we do the four things, which is
5 (inaudible) "In judging whether or not a conditional
6 use proposal shall be approved or denied, the
7 planning commission shall weigh the appropriateness
8 and desirability for the public convenience or
9 necessity to be served against any adverse
10 conditions that would result from authorizing the
11 particular development at that location and those
12 four things listed below."

13 So anyway, that is not in staff's
14 report. Since I've been here, that has not been
15 listed as something that we have addressed.

16 I discovered that, and then that's
17 kind of what I'm basing -- in part, basing my
18 position on. So I know I'm throwing a monkey wrench
19 into things, because I do see, from the research
20 I've read, that recreational marijuana can cause a
21 significant increase in accidental -- unintentional
22 poisonings to young children. So anyway --

23 COMMISSIONER: You know, I agree with
24 you, that's kind of a monkey wrench because that
25 standard has never been enforced before that I'm

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

21

1 aware of.

2 COMMISSIONER: Right.

3 COMMISSIONER: And -- but I would --
4 over the last however many years -- we've been
5 applying these other four standards. In all
6 fairness to these folks, I think we need to use the
7 same standards on them that we've used on everybody
8 else for the past 20 years. And somehow, then, once
9 we get through this proceeding, we need to figure
10 out how to shoehorn all this in through the Council
11 or whatever as to what's going to happen in the
12 future.

13 But I don't think we should throw it
14 in now in this proceeding when it's never been
15 thrown in before. That's what I'm objecting to, not
16 necessarily your interpretation of it, but the
17 process of using it now when we have never used it
18 before.

19 SCOTT: Okay. There's a couple things
20 here I need to jump in for clarification purposes.
21 It has always been there. It's just never been a
22 criteria that you guys have used.

23 COMMISSIONER: Are we supposed to use
24 it?

25 SCOTT: You can use whatever you want

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

22

1 based on the facts. So talking to the attorney
2 about this particular issue -- because when I talked
3 with the attorney, I wanted to talk about several
4 things -- of course you can use that criteria should
5 you choose. The strength of the argument is
6 where -- it's questionable.

7 One of the things that he pointed out
8 was, very simply, adverse -- adverse conditions.
9 How do you prove adverse conditions and what are you
10 going to cite for those adverse conditions? And --
11 and it's a scale situation.

12 COMMISSIONER: It's very subjective.

13 SCOTT: Well, it is. So the scale is
14 in each of your minds and your scale is do you feel
15 that it's going to -- the benefit is going to out
16 weigh the potential adverse conditions, or do you
17 feel that the adverse conditions outweigh the
18 potential benefits of whatever use it is?

19 So I know that doesn't clarify it
20 much, but -- but what I'm saying is, is that is also
21 part of the crux or criteria that anyone on any
22 planning commission can use to make their point or
23 validate their argument. So good discussion,
24 though.

25 COMMISSIONER: I think just take the

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

23

1 monkey wrench out (inaudible) that just causes
2 problems. But we historically have been very
3 careful about precedent in trying to be fair to all
4 the applicants. So maybe I can approach this in a
5 different way and that is -- like when we were
6 looking at the coffee roaster -- I brought this up
7 last time -- is we spent a lot of time being very
8 concerned about the smell of the roasting coffee
9 impacting neighbors or surrounding uses, and we've
10 done so with the dog grooming and the dog housing,
11 whether it's going to be parking or quite possibly a
12 child sticks their hand through the fence
13 (inaudible), you know, concern how it impacts the
14 neighbors.

15 I guess I'm just saying that if they
16 are selling the research and that where it comes
17 down to what the attorney said about having some
18 type of empirical standards, that's what I brought,
19 and it shows that if you have recreational
20 marijuana, the children that live in surrounding
21 areas, the increase of poison control calls goes up
22 five times and hospital is twice in Colorado, the
23 only known area that has this.

24 So anyway -- so if we just look at
25 precedent, I'm looking at the impact this is going

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

24

1 to have on those people that are living in the other
2 areas, just like the coffee smell and the dog smell,
3 so maybe take it from that approach and weigh it
4 that way. You still may not weigh out, but I'll
5 take this first part out of this.

6 SCOTT: And when Liz and I considered
7 the staff report with Dave Kinney, that's the whole
8 purpose of a conditional use. The whole purpose of
9 a conditional use is to look at the angles and to
10 allay those concerns. Like, as an example, just to
11 clarify -- I know we've got folks in the audience
12 that don't understand -- I'm just going to dig a
13 little deeper. I'm just going to just use one of
14 your examples on the dog kennel.

15 So we had a dog kennel/dog grooming
16 business, a couple of them, that had opened up in
17 town, and basically what the planning commission did
18 is said -- they said, Hey, look, we're going to
19 allow this conditional use for the period of one
20 year. At the end of one year, we're going to take a
21 look at the complaints in the area, what was the
22 impact on the neighbors, did the dogs bark? Were
23 they distracting? Did they disturb the peace? What
24 were the impacts to the community?

25 And that's why staff was suggesting

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

25

1 those types of pieces are absolutely legitimate to
2 consider during a conditional use.

3 COMMISSIONER: And that's why Trish
4 and I -- what we're talking about is that given that
5 edibles are not sold, that could dramatically
6 increase the negative impact on the environment and
7 that's, I assume, a condition we can put on it, so
8 I'm just open to that.

9 COMMISSIONER: Well, our concern with
10 the dogs and the coffee was -- we said if it bothers
11 anybody -- we're going to give you the use on both
12 of them, and if it bothers anybody, we're going to
13 come back and take a look at it. That's not what
14 we're doing here.

15 SCOTT: Well, it could be. You're not
16 to that point yet, Commissioner Andrews.

17 COMMISSIONER: What Gary is saying is
18 I don't want to give them the use because there's
19 evidence from other states that says that will
20 happen. That's the difference.

21 SCOTT: Okay. Well, I think you need
22 to get a vote to where you got to the part where
23 your putting conditions on there. So continue your
24 discussion. We don't want to get to the cart before
25 the horse.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

26

1 UNIDENTIFIED FEMALE SPEAKER: My view
2 would be -- as a suggestion -- as a suggestion --
3 that we grant conditional use that they be allowed
4 to sell the recreational marijuana with the
5 exception of edibles. And the conditional use is no
6 edibles. You can sell recreational, however -- in
7 whatever form it is, but you cannot sell edibles.

8 The impact on finances and that sort
9 of thing, I have not a clue, but that's not my job
10 to figure out how that would pan out for them
11 financially. It's just -- if that's a concern that
12 we have, then that would be one way to address it.
13 And it doesn't mean -- it doesn't not [sic] mean,
14 Scott, that they could come back in a year or two
15 and say we have this conditional use and we would
16 like it reviewed and revised?

17 SCOTT: Actually, if I can interject,
18 we did anticipate this being a possibility.

19 COMMISSIONER: Okay.

20 SCOTT: Sorry. Just one second. I've
21 got people all over the place tonight.

22 So here is the deal with that. I'm
23 sorry. Here is the deal with that. So if the
24 applicant would voluntarily agree that they wouldn't
25 have edibles, but you cannot require it.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

27

1 COMMISSIONER: You can't require it?

2 SCOTT: No. No. If they would agree
3 to it, that's one thing. But you cannot require
4 that as a conditional use.

5 COMMISSIONER: Why not?

6 COMMISSIONER: Why not? Because we
7 can -- you have to have a filter. You can roast
8 coffee. You have to have a filter. What's
9 different about this? I don't understand that.

10 SCOTT: They just said, no, you can't
11 do it.

12 COMMISSIONER: Who said no?

13 SCOTT: The city attorney.

14 (Crosstalk.)

15 MR. SIMPSON: Is there any way I could
16 say something here?

17 COMMISSIONER: No. It's a closed.

18 (Crosstalk.)

19 UNIDENTIFIED FEMALE SPEAKER: He
20 didn't clarify?

21 SCOTT: You were on the conference
22 call, too. Basically, he said that there are
23 conditions that you can place upon a business or a
24 potential business use, and then there's ones that
25 have to be -- that have to be voluntary. And he

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

28

1 indicated that other shops are allowed to have every
2 type of product, and this would be an undue -- it's
3 an undue condition.

4 But, he said, if they voluntarily did
5 that -- basically the bottom line was typically
6 commissions can't do it, but if they voluntarily
7 agree that they would do that, then can you can put
8 it as a condition.

9 COMMISSIONER: Okay. So Gary
10 (inaudible) talk about the concern of children as it
11 related to edibles?

12 COMMISSIONER: Yeah, yeah. You mean
13 which -- it broke it down into that 9 percent was
14 due to the product not being in a child-resistant
15 container, and 40 scenarios were poor child
16 supervision or product storage was the issue, and
17 the edible products were responsible for 51
18 exposures, or 52 percent.

19 COMMISSIONER: That was for poor
20 supervision. Right?

21 COMMISSIONER: How do you govern
22 against that?

23 COMMISSIONER: No, you can't, and
24 that's why I think that the idea of edibles, I mean,
25 it knocks out the biggest --

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

29

1 COMMISSIONER: It's not the fact that
2 they are selling edibles. It's just the parents put
3 them where the kids can get at them?

4 COMMISSIONER: And this was the other
5 part --

6 COMMISSIONER: Okay.

7 COMMISSIONER: So there was the --
8 well, obviously, if there's edibles, they left it
9 out.

10 COMMISSIONER: Yeah.

11 COMMISSIONER: Yeah.

12 COMMISSIONER: So I know I don't get
13 to vote because I didn't know that we had to listen
14 to the tapes, that's my fault, but I did spend a lot
15 of time thinking about this because -- so I had some
16 thoughts here, and I don't know if they pertain
17 here.

18 Speaking of -- the first one was the
19 criteria of what we have to decide on here and, you
20 know, you go to boilerplate, well, you know, it's so
21 far from the streets and all the nuts and bolts --

22 SCOTT: Well -- actually -- actually,
23 Rob, I'm going -- I don't even think you are allowed
24 to participate because you weren't at the first part
25 of the hearing.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

30

1 COMMISSIONER: Really?

2 SCOTT: Yeah.

3 COMMISSIONER: I don't even have to be
4 here?

5 SCOTT: Well, that's true. That's
6 true. But you're here. I mean, you know, it's one
7 of those things that from a procedural standpoint --

8 COMMISSIONER: So I could speak in the
9 public part?

10 SCOTT: You could. You could go out
11 there, and if they open -- if they open up and
12 recognize the public, you can certainly do that.

13 COMMISSIONER: Okay.

14 SCOTT: Yes. But as an acting
15 commissioner, I have to -- I have to stop that. I
16 apologize.

17 COMMISSIONER: So take a motion back
18 up?

19 COMMISSIONER: Yes.

20 COMMISSIONER: Okay. I move that we
21 reopen this for more public testimony.

22 COMMISSIONER: Okay. I kind of want
23 to go through and have everybody -- I just feel like
24 we've kind of hogged it. I want to get to Mike and
25 Brian and then we'll open up. Is that okay?

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

31

1 COMMISSIONER: Sure. I'll hold my
2 motion then until --

3 COMMISSIONER: That way we'll get to
4 hear everything. Mike, what are your thoughts?

5 COMMISSIONER: There was a whole lot
6 more going on over this last week than when I first
7 came in thinking (inaudible) what we were doing.
8 And I'm really having -- I'm having some problems
9 with, you know, adverse conditions, you know, and
10 the actual value of property around the facility. I
11 know I would not buy a home next to or that close to
12 a facility.

13 So I listened to what everybody has
14 been saying. Everybody has valid, you know,
15 arguments. I mean, there's some good things and
16 some bad things. I know the City needs revenue, but
17 how bad do they need the revenue?

18 But at this point I've changed my mind
19 from last week, Scott. I'm really not in favor of
20 selling recreational marijuana in Brownsville.

21 COMMISSIONER: Okay. Brian?

22 COMMISSIONER: I'm still right where I
23 was before. I still, you know -- I know the
24 attorney said this and this and this about the park,
25 but still, children play in it. We're 600 feet

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

32

1 away, and we can put whatever label we want on it.
2 I mean, we have to think about this. This is
3 against -- I mean, granted, the State of Oregon
4 passed it, but we're doing something that's against
5 federal law here, and I just -- I just can't vote
6 yes.

7 COMMISSIONER: Okay. Thanks, Brian.

8 COMMISSIONER: My position still
9 stands with the adversely affecting the neighbors,
10 property values, included in that, so --

11 COMMISSIONER: Okay. All right. All
12 those in favor to open up to public opinion --

13 COMMISSIONER: Don't you want my
14 opinion?

15 COMMISSIONER: I thought you had --

16 COMMISSIONER: Shocked and appalled.

17 COMMISSIONER: I'm sorry.

18 COMMISSIONER: Well, I asked
19 questions.

20 COMMISSIONER: Yes. I'm sorry you
21 didn't make a formal statement. (Inaudible).

22 COMMISSIONER: You're back pedaling
23 now. Okay, so -- so are we actually doing a re-vote
24 or we're just finishing a discussion? We're just
25 getting final discussion points?

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

33

1 COMMISSIONER: Yeah.

2 COMMISSIONER: Is that what I'm
3 understanding?

4 COMMISSIONER: Yeah.

5 COMMISSIONER: Then I guess I do thank
6 you, but I guess I pretty much asked the questions
7 and Scott really clarified. I wasn't aware we
8 couldn't do a conditional use permit based on not
9 selling edibles so, you know, that was good --
10 that's important information for me to have.

11 I also think that -- you know, I
12 don't, I don't use marijuana medically,
13 recreationally, or anything, but I think we err if
14 we try to overregulate.

15 And when you can go to Corvallis,
16 Albany, Lebanon, Sweet Home -- I don't know where
17 all else they have -- and bring edibles back here,
18 you know, just because you buy it -- don't buy it in
19 Brownsville doesn't mean that you don't have the
20 same risks to children and the same negligent
21 parents who -- you know, they have it in the house
22 and they are not treating it as the drug that it is
23 or having the effect that it does on children.

24 And I think there's a limit to what we
25 can try and regulate. And I -- I just feel that

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

34

1 they have met the conditions. They have done what
2 the City has -- (inaudible) questions. And I
3 absolutely agree, we can't go back and suddenly
4 change 12 years of history and decide to put in
5 another criteria. That's not fair to anybody
6 anywhere. We need to finish this out and then
7 revisit that and alter it if that's what we deem
8 needs to be done. But we have to use the same
9 criteria that we've been using for the last 12
10 years.

11 And if you look through this, the four
12 points that the City made, and as far as I'm
13 concerned, they have -- personal opinion aside --
14 they have met the criteria required for this
15 conditional use, so I stand with my original
16 position, and that is to vote for it.

17 COMMISSIONER: Okay. Thank you. All
18 those in favor of opening up to public discussion?
19 Looks unanimous. Okay.

20 The applicants can go ahead and speak
21 if you'd like.

22 MR. SIMPSON: Thank you. I came to
23 this meeting two weeks ago thinking this was just
24 going to be just a rubber stamp procedure. We've
25 met all the requirements, and my feeling is based on

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

35

1 the State -- or the vote that we had last November
2 that says the State says you have to let -- let a
3 dispensary open up if the majority of voters say
4 yes, and they did.

5 So this whole discussion to me seems
6 very, very irrelevant to what's going on other than
7 what Dan or Don and Trish had said. They are spot
8 on. I applaud what you're saying because we meet
9 the requirements and the voters in Brownsville said
10 yes. We won by three votes. We got the majority.
11 If we would have lost by three votes, this meeting
12 wouldn't be here. You wouldn't say, well, it's so
13 close. Well, we might revisit this. No.

14 As far as edibles go, there are a lot
15 of people that don't like to smoke it, a lot of
16 people. Especially the older generations, they
17 don't smoke, period. And they take tinctures, they
18 take edibles responsibly.

19 How much -- how many news stories have
20 we seen in the Democrat Herald lately about people
21 in Albany, Corvallis, Lebanon, Sweet Home -- not
22 Sweet Home yet. They are going recreational -- how
23 many news stories have you seen in the last month
24 about local people in those towns getting -- their
25 children going to the hospital? If it happened, it

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

36

1 would be all over the paper. I haven't even seen
2 one since recreational has gone legal in this area.

3 So this discussion you're having is
4 really bothering me because I feel that it's totally
5 irrelevant. We meet all the requirements.

6 And -- and the State says you have to
7 allow it somewhere in Brownsville. That's the law.
8 Right, Scott?

9 SCOTT: Yes.

10 MR. SIMPSON: Okay.

11 SCOTT: That's what they say, yes.

12 MR. SIMPSON: That's all I'm going to
13 say right now. Thank you.

14 MS. ASHFORD: We could be selling
15 edibles right now and who would know the difference
16 medically? Medical edibles are twice as strong as
17 recreational which could mean that any child that
18 got their hands on a medical edible would be in
19 twice as bad of shape. Recreational edibles are
20 half as strong.

21 These items -- I called the OLCC, by
22 the way. They are not sold in gummy bear shapes or
23 wormy shapes or attractive candy shapes. They are
24 in little adult-looking things. They are in
25 packages that I can't even hardly open. Anybody

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

37

1 that's leaving stuff like this around for a child to
2 get ahold of is an irresponsible adult, and they
3 should not be allowed to purchase those items.

4 Somebody like us who are responsible
5 and are following all guidelines, local and state,
6 should not be punished for someone else's
7 irresponsible actions for their children.

8 I never let my children get their
9 hands on any product like that. I never let my
10 children have alcohol, which is much more readily
11 available, easy, easy, easier for children, and much
12 more deadly.

13 So we could be selling edibles right
14 now. Nobody would know the difference. It's
15 perfectly legal under the medical license that we
16 possess. So then what's the difference selling
17 medical from recreational?

18 Well, number one, a medical license
19 holder only has to be 18 years of age to come into
20 our dispensary. Recreational, you have to be 21 or
21 older. The packaging is the same. The strength is
22 half for the product.

23 The OLCC is extremely strict. They
24 are much stricter than the medical by far. And it's
25 all going OLCC, so this is going to be even more

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

38

1 closely regulated.

2 There has to be reasonable zoning in
3 the City of Brownsville, and you all know that, so
4 by restricting us by either a pocket park or by what
5 we sell is basically restricting us and is going to
6 result in an expensive lawsuit against the City of
7 Brownsville. And I'm not threatening anyone. I'm
8 just stating a fact.

9 We've been putting up with this for
10 three and a half years, and I've had enough. You're
11 not being reasonable here. And we are perfectly
12 willing to follow guidelines that are set forth by
13 Brownsville, and we've bent over backwards to do so.
14 And we've met all the State criteria, which is
15 extensive and extremely strict. And we are the
16 model -- I talked to them, and they said that as far
17 as our bookkeeping goes and all of our recordkeeping
18 goes and keeping track of all of our product that we
19 sell, we are head and shoulders above anyone else in
20 the state right now. So you should be proud of what
21 we're doing. We're closing down the black market.

22 I've heard that from people on the
23 street that have come in and said, "You're doing it.
24 This is what you set out to do and your
25 accomplishing it. You're basically shutting down

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

39

1 sources for children to get their hands on these
2 products in our community, and thank you." I've
3 been told that.

4 So you should be ashamed of yourselves
5 for putting this type of restriction on people like
6 us when we are trying our best to help our
7 community.

8 COMMISSIONER: Okay. Anybody else
9 like to speak in favor of the application?

10 COMMISSIONER: I don't know if I'm in
11 favor, per se, but I guess I will.

12 COMMISSIONER: You can take a neutral
13 position.

14 COMMISSIONER: Name and address,
15 serial number.

16 COMMISSIONER: It's the whole process.

17 COMMISSIONER: Just for the record, go
18 ahead and state your name and address, please, Rob.

19 COMMISSIONER: (Inaudible) City
20 Councilor, planning commission member. Nonvoting at
21 this time.

22 So I do apologize for missing the last
23 meeting. I had a family emergency. Father-in-law
24 broke his hip. Had to take off in a rush, so I
25 apologize for that.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

40

1 I just spent a lot of time thinking
2 about this and, you know, researching it back and
3 forth to see the pros and cons of all of this.

4 One of the things -- and Don kind of
5 touched on it -- the criteria that we're supposed to
6 be using to do this. A lot of the criteria is just
7 very black and white. You know, are the setbacks
8 right? Is the utilities right? Is the hedging
9 right? Blah, blah, blah.

10 You know, the nuts and bolts criteria
11 we look at, it all comes down to, as you say, very
12 subjective. Is it an asset to the community? Is it
13 a (inaudible) to the community?

14 So that's that kind of nebulous thing
15 that everyone is pulling in their personal opinions
16 to make this decision, which is probably what they
17 are supposed to be doing. But, you know, it is a
18 personal opinion that everyone is pulling in here
19 instead of, you know, sitting down and reading
20 paragraph 3B and saying, yes, it matches that, it
21 matches that, it matches that.

22 As Don has said, it covers all of them
23 except for do you like it or do you not like it? I
24 guess that's what it comes down to.

25 One of the things I did look up and

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

41

1 say the majority of the Oregon voters approved it
2 and the majority of the Brownsville voters did
3 approve it, and so that really -- I mean, it sounds
4 like the vote is going to fail here since
5 (inaudible) no on it. It's going to go to the City
6 Council, where it should go anyway. You know, let
7 the City Council earn their money and do what they
8 are supposed to do here. I mean, whether we give it
9 a blessing or not a blessing, it's probably going to
10 end up there anyway. So I don't know (inaudible),
11 but it's going to end up at the City Council and
12 they are obviously going to have to make another
13 decision on that.

14 I do think there's a lot of personal
15 responsibility in recreational and the edibles as
16 you talk about. You know, it does come down to a
17 responsible parent. It doesn't matter what kind of
18 medication you have with kids, Vicodin or Miller
19 Light, you know. If you're not a responsible adult
20 and you don't -- and you abuse it -- you know,
21 there's a thousand vices out there in the world that
22 can trip you up whether it's sex, drugs, rock &
23 roll, whatever it is, gambling, food, you know, you
24 can overdo it in any of those, so it does come down
25 to being a responsible adult.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

42

1 And if you think that people in our
2 community aren't responsible enough to handle it,
3 you know, that's really what you're doing. I don't
4 know that you can say that, well, people in our
5 community aren't responsible enough to put their
6 edibles away.

7 Well, that's like saying it's not
8 responsible enough to lock up your liquor cabinet.
9 It's a legitimate point, but I don't think you can
10 regulate every household and say, well, you can't
11 sell it here because you're not responsible enough.
12 That's my pin on the edibles.

13 I mean, I do see that there is a risk
14 hazard, but if you're going to be responsible enough
15 to buy it, you should be responsible enough to put
16 it away just like your prescription drugs, just like
17 your alcohol.

18 One of the criterias I was thinking
19 that we can put on there was -- this is what I don't
20 like about -- you know, you go to Eugene and you see
21 all these flashy signs with the balloon blowup guy
22 and the guy spinning the sign like a pizza, you
23 know. You don't get to do that for alcohol. OLCC
24 doesn't allow that for the liquor store to do that,
25 and I don't think that should be allowed on the

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

43

1 freeway if there was any kind of flashy neon signs.
2 That would be a criteria that we would -- that I
3 would like to see put on it if it did pass or it
4 does pass.

5 As far as the zoning of where it's at,
6 I think the City Council -- or, I mean, the planning
7 commission did a -- we did extensive work to put it
8 where it is. We thought that was the best location
9 in the whole town for that. And so to say, well,
10 that's not a good location, that's the best location
11 we all came up with for a place to put it.

12 So to say it's not the right place,
13 well, we didn't do our job, then, if you're saying
14 it's not the right place to have it. (Inaudible)
15 commercial, not on a highway, out of downtown,
16 (inaudible) criteria are met long ago.

17 So I don't know if you can do a
18 conditional use for a year and -- trial year -- and
19 see how it goes and see if there are any complaints.
20 But I guess if I was going to vote -- which I don't
21 get -- but if I was going to vote, I would vote in
22 favor of allowing the application to proceed.

23 COMMISSIONER: Thank you. Thanks,
24 Rob. And would you like to speak against or for the
25 applicant? Or just listening?

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

44

1 UNIDENTIFIED FEMALE SPEAKER: If I was
2 speaking, I would be speaking against, and so I
3 suppose just to give you some balance --

4 COMMISSIONER: You submitted the
5 letter. Right?

6 UNIDENTIFIED FEMALE SPEAKER: Yes.
7 And you have that before you. I assume everyone has
8 a copy. I have nothing to add other than that.

9 COMMISSIONER: Okay. Before we close
10 the public portion, are there any specific questions
11 anybody would like to ask the Simpsons?

12 (Inaudible.)

13 UNIDENTIFIED FEMALE SPEAKER: I
14 believe Rob brought up a point -- his final point
15 was -- if I remember right, I don't know if we can
16 do a conditional use permit for one year.

17 (Inaudible).

18 SCOTT: I can. So going back to the
19 dog situation that you had. You know, the planning
20 commission, as part of the report that staff brought
21 to you, has that in there that, you know, you can
22 put a condition on it to see what those, if any,
23 adverse impacts are over the course of that year,
24 and it can be re-evaluated.

25 UNIDENTIFIED FEMALE SPEAKER: Okay.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

45

1 SCOTT: So that is something -- I also
2 want to -- I also want to say something because
3 Mr. Simpson made a very valid point, too, that I
4 want to address.

5 So, you know, bottom line is the State
6 of Oregon says, absolutely, yes, this is all legal,
7 right. So the bottom line is locally, of course, we
8 have due process. So as I think Mr. Rob Wendgren
9 made the point, you know, if -- regardless of how it
10 turns out, if it turns out not in favor of the
11 applicant, due process does happen.

12 So they will -- they will be required
13 to go to the Council for that. If the Council would
14 uphold the denial, then it will go to the Land Use
15 Board of Appeals -- what is it?

16 COMMISSIONER: LUBA.

17 SCOTT: LUBA, yeah, Land Use Board of
18 appeals. That didn't sound right to me for some
19 reason in my mind.

20 Anyway, the attorney said on that
21 front -- I'm just telling you what the attorney
22 said -- is -- the bottom line is the Land Use Board
23 of Appeals is going to stamp that "granted" and he's
24 going to send it back down to me as city
25 administrator and send it to the Mayor's attention

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

46

1 and say, hey, you guys, you know, do your work.

2 This is -- this is required.

3 That does not mean that you have to
4 vote a certain way. It means that you look at the
5 criteria. Again, it gets into that scale situation
6 that I talked about earlier. So I'm just giving you
7 a broadbrush stroke of what the whole process would
8 look like.

9 COMMISSIONER: So now would be the
10 time to put conditions on it that we would want
11 before it goes to Council? LUBA?

12 SCOTT: Yes. Well, either you do
13 tonight or it goes to Council and they do it.

14 COMMISSIONER: It won't go to Council
15 if we approve it.

16 SCOTT: Truth. That is truth.

17 COMMISSIONER: It won't go to Council.

18 SCOTT: Right.

19 COMMISSIONER: And I do take
20 exception, Rob, that -- yeah, I think the planning
21 commission -- I think this is an appropriate
22 conditional -- it's an appropriate thing for us to
23 review.

24 And your comment about it really
25 should end up in the Council anyway, I'm just saying

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

47

1 -- just saying.

2 COMMISSIONER: Go ahead.

3 COMMISSIONER: Personal opinion.

4 COMMISSIONER: I mean, is it a moot
5 point that it's legal to have it here and like what
6 are we doing? Are we just here to put some
7 conditional use on it? Or are we just here to voice
8 our opinion for the Council?

9 I mean, if what they say is true and
10 what you say is true, they can legally have a store,
11 what are we doing?

12 SCOTT: As long as they meet the
13 conditional use.

14 COMMISSIONER: Why do we even have to
15 vote?

16 COMMISSIONER: I've been listening to
17 all of this very carefully because -- from a
18 personal standpoint, I tried marijuana twice, and I
19 hated it both times. I was in my twenties, and I
20 hated it. I don't know why anybody would want to
21 smoke it, and I don't like people to smoke it and I
22 don't like when they use it, but, frankly, that's
23 none of my business so long as they -- I don't like
24 people to get drunk either.

25 But I don't see in here anywhere where

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

48

1 it says we're supposed to vote based upon how we
2 feel about it. And if we use our personal opinion
3 as to the use of marijuana, we're going outside of
4 all this criteria. We're not -- we're not passing a
5 moral vote here as to whether it's right or wrong.
6 We're just passing a vote on whether or not they
7 have done what all of this paperwork says they are
8 supposed to do, whether we agree with it or not.

9 COMMISSIONER: And I don't think
10 (inaudible).

11 COMMISSIONER: Okay.

12 COMMISSIONER: It's like -- take it
13 back to the coffee is -- some people felt that -- I
14 said that I would love the smell of coffee. Other
15 people said they wouldn't like the smell of coffee.
16 Some people think that dogs barking are annoying.
17 Other people say that's part of living in the
18 country.

19 So -- but still, we approached it as
20 kind of scientifically as we could, weighing those
21 potential adverse effects against the surrounding
22 uses.

23 COMMISSIONER: Correct.

24 COMMISSIONER: So when I look at this
25 -- and I don't have anything against marijuana

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

49

1 because I was strongly in favor of the medical
2 marijuana and I told the Simpsons that -- I'm sorry,
3 I keep calling you the Simpsons -- but Ashford and
4 Simpsons -- however, I do -- came across is what I
5 feel is some empirical evidence that tells me that
6 now this part of the, criteria there is an adverse
7 impact that I feel there is some scientific evidence
8 for.

9 I'm okay with medical marijuana and
10 the use or even people using it whenever they want
11 to. But now I'm being asked does recreational
12 potentially have an adverse effect? So -- but it's
13 hard not to separate -- it's a fine line between
14 personal feelings and when you're determining
15 adverse.

16 COMMISSIONER: Well, I agree, and I'm
17 not necessarily making (inaudible) my remarks.

18 COMMISSIONER: Yeah, I know.

19 COMMISSIONER: But to me, we should
20 not be voting on whether we are for or against --

21 COMMISSIONER: I agree.

22 COMMISSIONER: -- the use of
23 marijuana.

24 COMMISSIONER: I agree.

25 COMMISSIONER: Our personal opinion

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

50

1 should stay out of this whole thing together.

2 COMMISSIONER: Right.

3 COMMISSIONER: Yeah.

4 COMMISSIONER: And just based upon
5 some of the discussions I've heard among this group
6 of people, I've cringed, because I've sensed that
7 they are projecting their personal feelings into
8 this rather than what it says on the paper.

9 And I would urge for us not to do
10 that. This is not a place for us to vote our
11 personal opinions on morality or whatever you would
12 call it.

13 COMMISSIONER: Well, the truth be
14 known on my part, if you're thinking about me, I
15 could care less if everybody smoked pot. I could
16 absolutely care less. But I do not believe that
17 facility fits in this area. I just don't.

18 COMMISSIONER: Why?

19 COMMISSIONER: Just doesn't.

20 COMMISSIONER: Why?

21 COMMISSIONER: It doesn't -- I
22 believe -- okay, so if we went down to B on this, it
23 doesn't fit there.

24 COMMISSIONER: On where?

25 COMMISSIONER: In my opinion. Weren't

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

51

1 we discussing B, adverse?

2 COMMISSIONER: Page 6.

3 COMMISSIONER: Page 6B.

4 COMMISSIONER: Right.

5 COMMISSIONER: 1B?

6 COMMISSIONER: Right.

7 COMMISSIONER: Adverse impact.

8 COMMISSIONER: Right (inaudible).

9 COMMISSIONER: Okay.

10 COMMISSIONER: And adversely that, as
11 we call it the pocket park, that's going to
12 adversely affect that. That's my opinion.

13 COMMISSIONER: Okay. Well, that's
14 fine. Yeah, yeah.

15 COMMISSIONER: Okay. I probably need
16 to officially close the public portion of the
17 meeting again, so that is closed.

18 Any members have any further topics
19 for further discussion?

20 COMMISSIONER: Are you ready for a
21 motion?

22 COMMISSIONER: We've got to take a
23 vote first, don't we?

24 SCOTT: You need a motion.

25 COMMISSIONER: I mean you can --

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

52

1 COMMISSIONER: Yeah. So --

2 COMMISSIONER: Put it out there for
3 the vote. I'm going to take a motion.

4 COMMISSIONER: It sounds like we can
5 do that.

6 COMMISSIONER: I would move that
7 (inaudible) -- well written out. I just have to
8 find it.

9 I would move that we approve the
10 application for the sale of recreational marijuana
11 and include with that the conditions of approval
12 that staff was recommending on page 10 of their
13 report.

14 COMMISSIONER: Okay. Thank you, Don.
15 Is there a second for that motion?

16 COMMISSIONER: I second it.

17 COMMISSIONER: Mike seconds the
18 motion. Let's take a vote. Brian, what say you?
19 For or against?

20 BRIAN: Against.

21 COMMISSIONER: Okay. (Inaudible).

22 COMMISSIONER: Against.

23 COMMISSIONER: Okay. (Inaudible).

24 COMMISSIONER: For.

25 COMMISSIONER: For.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

53

1 COMMISSIONER: Against.

2 COMMISSIONER: Against.

3 COMMISSIONER: So it's four to two
4 against.

5 COMMISSIONER: So what do we do from
6 here?

7 SCOTT: Okay. So what happens from
8 here, the vote was called, the vote is four-two
9 against the use. What will happen now is within
10 five days, Mrs. Coleman will draft the notice of
11 decision. Mr. and Ms. Ashford and Simpson will be
12 able to appeal that decision within 15 days of that
13 notice to the City Council, and they will hear all
14 of the testimony and everything at the City Council
15 meeting in September.

16 COMMISSIONER: Okay. So we just close
17 out the meeting?

18 SCOTT: Well, we've got -- there's
19 another agenda item. But, yes, that portion of the
20 meeting.

21 COMMISSIONER: Go ahead and close out
22 the request for conditional use.

23 SCOTT: There was a roll call vote
24 taken. Did you record the roll call?

25 UNIDENTIFIED FEMALE SPEAKER: I did.

City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

54

1 Just to be clear, Commissioner Wyant was a no.
2 MacDaniel was a no. Thompson was a yes. Andrews
3 was a yes. Compton was a no. And Kometz was a no.

4 COMMISSIONER: And Rob abstains.

5 UNIDENTIFIED FEMALE SPEAKER:

6 (Inaudible) right. Okay. Thank you.

7 --o0o--

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City of Brownsville Planning Commission Meeting
Transcribed from CD Simpson July 31, 2017

55

1 STATE OF OREGON)
2) ss.
3 County of Lane)
4
5

6 I, Sara Fahey Wilson, CSR, a Certified
7 Shorthand Reporter for the State of Oregon, certify
8 that the transcript is a true record of the
9 transcription of the audio recording; that the
10 foregoing transcript consisting of 54 pages contains
11 a full, true, and correct transcript of said audio
12 recording so reported by me to the best of my
13 ability on said date.

14 IN WITNESS WHEREOF, I have set my hand
15 this 11th day of September 2017, in the City of
16 Eugene, County of Lane, State of Oregon.
17
18
19
20
21

22 
23 Sara Fahey Wilson, CSR
24 CSR No. 06-0400
25 Expires: March 31, 2020